



Revision number:

Agent: Jared Gardner
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Item: PROGRAMMING/CONSULTING SERVICES FOR INFORMATION TECHNOLOGY

Vendor: SEE ATTACHED

Internet Homepage: SEE ATTACHED

Telephone: SEE ATTACHED

Fax number: SEE ATTACHED

Contact: SEE ATTACHED

Email address: SEE ATTACHED

Brand/trade name:

Price: SEE ATTACHED RATE LIST

Terms: NET 30

Effective dates: 07/01/07 through 06/30/09 with 2 (1) year options

Days required for delivery: AS AGREED

Price guarantee period: 1 YEAR

Minimum order: NONE

Min shipment without charges: N/A

Other conditions: SPENDING MAXIMUM \$100,000 PER AGENCY PROJECT
POTENTIAL ANNUAL RENEWALS THROUGH 06/30/09

NOTE: THIS IS A NEW CONTRACT

THIS IS A MULTIPLE AWARD CONTRACT, USERS MUST FOLLOW SELECTION PROCESSES AS DESCRIBED IN THE USERS GUIDE AND APPROVAL FORM PROVIDED BELOW.

This contract covers only those items listed in the price schedule. It is the responsibility of the agency to ensure that other items purchased are invoiced separately. State agencies will place orders directly with the vendor creating a DO in Finet. Agencies will return to the vendor any invoice which reflects incorrect pricing.

FINET COMMODITY CODE(S):

9182800000-COMPUTER-HARDWARE CONSULTING

9182900000-COMPUTER-SOFTWARE CONSULTING



Using the Contract

State Agencies

State agencies must follow the procedures as outlined in the 'User Guide'.

Political Subdivisions

Political subdivisions, K-12, and Higher education are permitted to use the contracted rates, but are not subject to the approval procedures outlined. While there is no requirement to seek State approval through the outlined procedures it is recommended that at least three of the vendors be contacted for the purpose of competition.

MC1015 Guides and Forms

Use of this contract is controlled by policies and procedures specific to this contract. In an effort to help both agencies and vendors to understand the policies and procedures user and vendor guides have been created.

User Guide

<http://www.purchasing.utah.gov/main/MC1015/userguide.pdf>

Authorization Form and Checklist

<http://www.purchasing.utah.gov/main/MC1015/authform.doc>

Vendor Guide

<http://www.purchasing.utah.gov/main/MC1015/vendorsguide.pdf>

Searchable Index

The index is designed to allow users to search, link, and jump directly to information related to the contract, contractors, and/or various services and rates covered by this contract. Use the index to learn more about the contractor's covered and the numerous programming, consulting, and training services available, as well as, quoted service rates for intermediate, and expert level skill sets. Also from the index you can generate an email list of vendors to solicit your scope of work.

<http://168.179.230.198/itconsulting/>

**Standard Contract Terms and Conditions
State of Utah, State Cooperative Contract**

1. AUTHORITY: Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

2. CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE: The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake Co.

3. LAWS AND REGULATIONS: The Contractor and any and all supplies, services, equipment, and construction proposed and furnished under this contract will comply fully with all applicable Federal and State laws and regulations.

4. RECORDS ADMINISTRATION: The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

5. CONFLICT OF INTEREST: Contractor certifies that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of the STATE or participating political subdivisions to secure favorable treatment with respect to being awarded this contract.

6. INDEPENDENT CONTRACTOR: Contractor will be an independent Contractor, and as such will have no authorization, express or implied to bind the STATE to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as expressly set forth herein. Compensation stated herein will be the total amount payable to the Contractor by the STATE. The Contractor will be responsible for the payment of all income tax and social security tax due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE will not be deemed to be employees or agents of the Contractor.

7. INDEMNITY CLAUSE: The Contractor will release, protect, indemnify and hold the STATE and the respective political subdivisions and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, his employees or subcontractors or volunteers.

8. EMPLOYMENT PRACTICES CLAUSE: The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

9. SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

10. RENEGOTIATION OR MODIFICATIONS: The terms of this contract will not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Director of Purchasing. Automatic renewals will not apply to this contract.

11. DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. TERMINATION: Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. NONAPPROPRIATION OF FUNDS: The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

- 14. TAXES:** Bid/proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K.
- 15. WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the STATE has relied on the Contractor's skill or judgment to consider when it advised the STATE about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the STATE has not been warned. Remedies available to the STATE include the following: The Contractor will repair or replace (at no charge to the STATE) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
- 16. PARTICIPANTS:** This is a contract to provide the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) with the goods and/or services described in the bid/proposal.
- 17. POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.
- 18. QUANTITY ESTIMATES:** The STATE does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for proposing purposes only and are not to be construed as a guarantee to purchase any amount.
- 19. DELIVERY:** The prices proposed will be the delivered price to any state agency or political subdivision. Unless otherwise specified by the State, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered will be shipped without transportation charges.
- 20. REPORTS:** The Contractor will submit quarterly reports to the State Purchasing Agent showing the quantities and dollar volume of purchases by each agency and political subdivision.
- 21. PROMPT PAYMENT DISCOUNT:** Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.
- 22. FIRM PRICES:** Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of bid/proposal opening.
- 23. PRICE GUARANTEE, ADJUSTMENTS:** The contract pricing resulting from this bid/proposal will be guaranteed for the period specified. Following the guarantee period, any request for price adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price adjustment must include documentation supporting the request and demonstrating a logical mathematical link between the current price and the proposed price. Any adjustment or amendment to the contract will not be effective unless approved by the State Director of Purchasing. The STATE will be given the immediate benefit of any decrease in the market, or allowable discount.
- 24. ORDERING AND INVOICING:** Orders will be placed by the using agencies directly with the Contractor. All orders will be shipped promptly in accordance with the delivery guarantee. The Contractor will then promptly submit invoices to the ordering agency. The STATE contract number and the agency ordering number will appear on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the STATE will be those prices on file with the Division of Purchasing. The STATE has the right to adjust or return any invoice reflecting incorrect pricing.
- 25. PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be made via a State of Utah (or political subdivision) "Purchasing Card" (major credit card). All payments to the Contractor will be remitted by mail unless paid by Purchasing Card.
- 26. MODIFICATION OR WITHDRAWAL OF BIDS/PROPOSALS:** Bids/proposals may be modified or withdrawn prior to the time set for the

opening of bids/proposals. After the time set for the opening of bids/proposals, no bids/proposals may be modified or withdrawn.

27. BID/PROPOSAL PREPARATION COSTS: The STATE is not liable for any costs incurred by the offeror in bid/proposal preparation.

28. INSPECTIONS: Goods furnished under this contract will be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or not in compliance with bid/proposal specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph will adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

29. PATENTS, COPYRIGHTS, ETC.: The Contractor will release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

30. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State Director of Purchasing.

31. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the STATE to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The STATE will issue a written notice of default providing a period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, the STATE may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future bid/proposal solicitations.

32. FORCE MAJEURE: Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The STATE may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

33. HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

34. NON-COLLUSION: By signing the bid/proposal, the offeror certifies that the bid/proposal submitted has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Solicitation, designed to limit independent proposing or competition.

35. PUBLIC INFORMATION: Except as identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the contract and related Sales Orders and Invoices will be public documents, as far as distribution of copies, and Contractor gives the STATE express permission to make copies of the contract, the response to the solicitation, and related Sales Orders and Invoices in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

36. PROCUREMENT ETHICS: The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953, as amended).

37. ENERGY CONSERVATION AND RECYCLED PRODUCTS: The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this solicitation.

38. CONFLICT OF TERMS: Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. Attachment A: State of Utah Standard Contract Terms and Conditions; 2. State of Utah Contract Signature Page(s); 3. Additional State Terms and Conditions; 4. Contractor Terms and Conditions.

39. ENTIRE AGREEMENT: This Agreement, including all Attachments, and documents incorporated hereunder, and the related State Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed

by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

Revision date: 12 Feb 2007

ATTACHMENT B

SPECIAL TERMS AND CONDITIONS

1. **INVOICING.** CONTRACTOR shall submit invoices to the agency user project manager:

The contract number shall appear on all invoices and correspondence.

Billings must be itemized, showing hours worked and work products created by each staff member with a clear definition of the project phase the work relates to. All billings must correlate to the project progress reports and submitted in a timely manner.

Upon approval of the invoice by the STATE Project Manager, payments will be within 30 days. STATE will remit payment by mail.

2. **PROGRESS AND PROGRESS PAYMENTS.** The CONTRACTOR shall begin the work required by this contract within seven calendar days following written notification by the STATE to proceed and shall prosecute the work diligently to the satisfaction of the STATE. The STATE may terminate this contract with cause, in accordance with the termination provisions herein, for failure of the CONTRACTOR to make satisfactory progress on the work. Progress payments may be required at the discretion of the agency.
3. **FINAL PAYMENT, PRODUCT, AND DELIVERY.** Final payment, including any amounts retained, shall be made 30 days after final sign off for each task and deliverable, such as file translation, custom computer programming or project records, and system test materials and documentation have been received and accepted by the STATE Project Manager as accurate and complete. The final product shall be delivered complete without any additional requirements of software, codes, proprietary access programs, keys, programs, etc., other than what was specified. Delivery shall not be deemed to be complete until the goods and services have been actually received and accepted by STATE after testing, based on described criteria.
4. **PROGRESS REPORTS.** The CONTRACTOR will submit monthly fiscal and technical progress reports following the format established by the STATE in sufficient detail to document the progress of the work and support the monthly claim for payment. The STATE Project Manager shall indicate information to be included in the progress reports, such as but not limited to: an overall project timeline (GANT Chart) to support the narrative progress report, identify the deliverables completed, for which payment requests are being made, a brief synopsis of the deliverable contents, and the invoice number of the payment request. Anticipated problems in completing future deliverables in accordance with the technical and schedule requirements of the contract shall be identified if applicable and the background behind them. Payments will not be made without a supporting progress report. The report is to be submitted at the same time as an invoice. Payments will not be made without a supporting progress report.
5. **PRICE GUARANTEES.** The CONTRACTOR agrees the prices bid on services in this contract shall be guaranteed through the term of the contract.
6. **CHANGE IN PERSONNEL OR RESOURCES.** No change in personnel or resources assigned to any project will be permitted without prior written approval of State's Project Manager.

7. **RESPONSIBILITY FOR WAGES AND TAXES.** The CONTRACTOR is responsible for all applicable company wages and taxes in accordance with the federal, state and local laws and ordinances.
8. **EMPLOYMENT OF STATE EMPLOYEES.** The CONTRACTOR agrees not engage in any way the services on this contract of any present or former STATE employee who was involved as a decision maker in the selection or approval process or who negotiated and/or approved billings or contract modification for this contract.
9. **NON-COMPETE AGREEMENTS.** The CONTRACTOR represents that its officers and employees are free to contract with the STATE and are not subject to restrictions by the terms of their present or past employment including, but not limited to, an agreement not to compete for a period of time, unless disclosure has been made. CONTRACTOR must disclose to the STATE any possible conflicts, in writing, before the contract is signed, and the STATE will evaluate whether to continue with contract execution. The STATE may elect to terminate a contract immediately with CONTRACTOR who is subsequently determined to be subject to such restrictions, without liability to the STATE. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR.
10. **CONFIDENTIAL INFORMATION.** To the extent work under this contract requires the CONTRACTOR may be given access to confidential or proprietary business, technical, or financial information belonging to the STATE. The CONTRACTOR shall, after receipt thereof, treat such information as confidential. Both parties shall maintain, as confidential, and shall not disclose to any person outside its employ, nor use for purposes other than performance of this Contract, any specifications, drawings, blueprints, data, business information, or other confidential information which is learned by virtue of this Contract, except where required by law. CONTRACTOR agrees not to appropriate such information to their own use or disclose such information to other parties unless specifically authorized by the STATE in writing. Upon expiration of this Contract, both parties shall promptly return all confidential material and copies to the other party. The foregoing obligations, however, shall not apply to:
 - A. Information, which, at the time of receipt by the CONTRACTOR, is in public domain.
 - B. Information, which is published after receipt by the CONTRACTOR, or otherwise, becomes part of the public domain through no fault of the CONTRACTOR.
 - C. Information, which the CONTRACTOR can demonstrate, was already in its possession at the time of receipt, and was not acquired directly or indirectly from the STATE.
 - D. Information that the CONTRACTOR can demonstrate was received from a third party who did not require the CONTRACTOR to hold such information in confidence.

11. **QUALITY OF SERVICES.** CONTRACTOR represents to STATE that it is experienced in and thoroughly familiar with all aspects of the services required hereunder and is properly qualified as applicable and is equipped, organized, and financially able to perform the services.

Regarding consultative work performed hereunder, the CONTRACTOR may be required to perform such additional work, during the warranty period, as is necessary to ensure any deliverable product hereunder meets the functional specifications as proposed by CONTRACTOR and approved by the STATE, or as otherwise agreed in writing as a part of this contract, without undue delays and without additional cost to the STATE. (Moved from 14. CONFERENCES).

No changes in the services to be provided by CONTRACTOR under this Contract shall be made without State's prior written approval.

12. **REQUIREMENTS FOR COMPUTER ELEMENTS:** Hardware, firmware and/or software element that the CONTRACTOR procures, furnishes, licenses, sells, integrates, creates and/or enhances for the STATE under this contract shall achieve the specific objectives specified in the work plan. These elements shall be free of defects, or "bugs," that would prevent them from achieving the objectives specified in the work plan.

Computer software and applications created and/or enhanced under this contract shall include as deliverables; user instructions, program documentation, program listings, source code and executables in specified compiled formatted files. The program documentation shall include flow charts and detailed treatment of decision algorithms and their technical basis. Appropriate STATE individuals will review "user instructions" and "program documentation" for acceptability. Formal sign-offs will record such events and be part of the project repository. Software development and operating system platforms shall be approved by the STATE and specified in the work plan. Changes to these platforms shall only be allowed by written authorization by the STATE.

13. **DEVELOPMENT STANDARDS.** CONTRACTOR agrees that all software development tools used for design, development, source code control and programs, will follow STATE standards. The CONTRACTOR must identify the development methodology that will be used for the duration of the project. In the event CONTRACTOR requests to use a technology or tool that STATE does not have an existing standard for, CONTRACTOR must notify STATE Project Manager to obtain written approval to use identified technology/tool. All software development tools must receive prior approval by the Project Manager before being used in the development/design phase of the project. Files developed or utilized shall not be password protected. Files being developed/stored on non State equipment/hardware or developed/stored on non network drives shall be backed up onto the State server/host by close of day every Friday (if Friday is a State holiday, the files shall be backed up on Thursday). Development must adhere to the State project management software development standards which may be provided to the CONTRACTOR by the STATE.

14. **CONFERENCES.** The CONTRACTOR will prepare and present written information and studies to the STATE so it may evaluate the features and progress of the work. The conferences shall also include inspection of the CONTRACTOR'S services and work products when requested by the STATE.

Progress and review meetings/conferences will be held as required. Either party may request a conference at a place designated by the STATE. If requested by the STATE, the CONTRACTOR shall prepare and distribute documentation that demonstrates the progress and features of the work and/or the deliverables to be reviewed. The CONTRACTOR shall

distribute copies (not to exceed 20) of this documentation to the list of attendees/reviewers designated by the STATE in a timely manner such that the attendees/reviewers will have sufficient time to review the documentation prior to the meeting/conference.

15. **PROJECT REVIEWS.** It is understood and agreed authorized representatives of STATE and, when federal Funds are used, the Federal Agency, shall have the right to review and inspect the work in process, and the CONTRACTOR facilities, at any time during normal business hours or by appointment.
16. **RIGHT OF FUTURE DEVELOPMENT.** The STATE reserves all rights to perform future development or enhancement of this system, and may copy, publish, and distribute these developments and enhancements. The STATE is in no way required to obtain the services of the CONTRACTOR for these developments or release these developments to the CONTRACTOR.
17. **SIMILAR PRODUCTS.** Should the STATE independently design, develop, or acquire ideas and concepts identical or similar to those provided by or contained in the CONTRACTOR's product. CONTRACTOR agrees this Contract shall not prevent STATE from using such ideas or concepts to design, develop, or acquire hardware or software for its use, provided STATE does not copy the CONTRACTOR's product.
18. **OWNERSHIP OF WORK PRODUCT.** CONTRACTOR agrees that any and all work product including but not limited to; all source codes, object codes, readable documentation, and training materials that are developed under the contract and paid for by UDOT shall be the sole and exclusive property of STATE.

CONTRACTOR further agrees that STATE is and shall be vested with all rights, privileges, title, and interests, including patent, copyright, trade secret, and trademark rights in CONTRACTOR's work product produced under this Contract. All rights and privileges associated with ownership are hereby provided to STATE. These rights and privileges include but are not limited to: 1) access to the source code as compilable files, 2) making unlimited copies of source code, object code, documentation, and training materials, and distributing these to public agencies, 2) the STATE and all other public agencies making changes to, enhancing, or making derivative works of the software, documentation and training materials, 3) disclosing the source code to other vendors and allowing them to make changes to the software, 4) unlimited licenses to store and run the software simultaneously on independent machines and networks, 5) access to documentation on database formats and interface protocols, 6) access to the support tools and development environment that were used to compile the software, keep it under configuration control and test it, and 7) access to the executable environment needed to run the software. CONTRACTOR shall not encumber said work product in any way or act(s) inconsistent with STATE's title thereto.

CONTRACTOR is required to execute all papers including patent applications, inventing assignments, and copyright assignments, and otherwise shall assist STATE at STATE's expense to perfect in STATE's rights, and other interests in CONTRACTOR's work product expressly granted to STATE under this Contract. All services, information, computer elements, programs, reports and other deliverables, which may be created and patented or copyrighted under any resulting contract, are the property of STATE, and shall not be used or released by the CONTRACTOR or any other person, except with prior written permission of STATE.

STATE also agrees that the CONTRACTOR may, during the period of execution of the contract, use the CONTRACTOR's copyrighted and/or patented Software developed by the CONTRACTOR outside the scope of this contract. However, before using any Software of this nature, the CONTRACTOR shall request written authorization from STATE to do so. The CONTRACTOR shall maintain ownership of CONTRACTOR Copyrighted and/or Patented Software as approved, in writing, by STATE for use in the contract. The CONTRACTOR hereby affirms that any future desire or need to use a proprietary module(s), other than those identified in the contract, shall be first identified to STATE, and written permission shall be obtained from STATE, before it can be used. Failure to obtain written permission shall, in effect automatically transfer ownership of said module to the State, including any future updates to said module in perpetuity

All documents and data pertaining to work required by this contract will be the property of the STATE and must be delivered to the STATE within 10 working days after termination of the contract, regardless of the reason for termination; and without restriction or limitation to their further use. Cost to all the above items will be considered as included in the basic contract compensation of the work as described.

19. **PATENTS, COPYRIGHTS & TRADEMARKS:** The CONTRACTOR shall not use, employ or incorporate into the work of this contract any materials, products, devices, processes, computer elements, designs, specifications, publications, graphics, visual media, etc., that are protected by patents, copyrights or trademarks owned either by the CONTRACTOR or by third parties to this contract unless prior written approval is obtained from the STATE to do so. When such approval is obtained, the CONTRACTOR shall secure the rights of use from the owner(s) of said patent(s), copyright(s) or trademarks(s) by suitable legal agreement that names the STATE as a recipient or co-recipient of these rights of use during the term of this contract. An original executed copy of this agreement shall be delivered to and approved by the STATE prior to commencing use of the patented, copyrighted or trademarked item(s). The CONTRACTOR shall be responsible for payment of all royalties and fees for said use during the entire term of this contract. The CONTRACTOR and their surety shall indemnify and save harmless the STATE from any and all claims of patent, copyright or trademark infringement, or for costs, expenses, penalties and damages that may be obligated by reason of an infringement related to the work performed, services rendered or deliverables furnished under this contract. When Federal funds make up all or part of the remuneration under this contract, the United States STATE of Transportation shall be named along with the STATE in all legal agreements covering patents, copyrights or trademarks.
20. **INTELLECTUAL PROPERTY INDEMNITY.** Upon STATE's written notification to CONTRACTOR, CONTRACTOR shall defend, at its expense, any claim against STATE alleging the Services, or any part thereof, infringe on any patent, copyright, trademark, trade secret, mask work, or other intellectual property interest in any country, and shall pay all costs and damages awarded. If an injunction against STATE's use, sale, lease, license, other distribution of the Services or Product, or any part thereof, results from such a claim (or, if STATE reasonably believes such an injunction is likely), CONTRACTOR shall, at its expense, (and in addition to the CONTRACTOR's other obligations hereunder) and as STATE requests, obtain for STATE the right to continue using, selling, leasing, licensing, or otherwise non-infringing but functionally equivalent. The provisions of this section shall not apply to any claim for infringement resulting solely from CONTRACTOR's compliance with STATE's detailed design specifications, where provided.

21. **FACILITIES AND MATERIALS.** The CONTRACTOR and all personnel working under this contract shall not acquire, borrow, copy, or use in any manner software, documentation, or data on any STATE data processing facility for use other than as required to complete this contract. Unless previously arrangements made between CONTRACTOR and STATE PROJECT MANAGER, and CONTRACTOR adheres to paragraph 14. Development Standards will be observed; the STATE shall provide required hardware for Contractors physically working at a UDOT facility.
22. **SUSPENSION OF WORK.** Should the STATE desire to suspend the work, but not terminate the contract, this will be done by written confirmation. The work may be reinstated upon two (2) weeks advance written notice from the STATE. The STATE understands any such suspension of the work may affect the time of performance to complete the work when reinstated
23. **FAILURE TO COMPLETE.** At any time the CONTRACTOR determines the contract work cannot be completed within the specified time or budget, the CONTRACTOR must notify STATE in writing, immediately. Completion of the contract in accordance with the schedule is the responsibility of the CONTRACTOR. The CONTRACTOR agrees to proceed with the performance of this contract continually and diligently in accordance with the agreed upon contract schedule and will make no charges or claims for extra compensation due to delays or hindrances within its control. Failure to comply with the contract schedule constitutes adequate justification for contract termination. The STATE may allow an extension of time beyond the agreed upon schedule, but by doing so does not waive any of its rights under the contract to secure full and complete contract performance
24. **NON-PERFORMANCE.** If, at any time, CONTRACTOR fails to demonstrate the required expertise (as represented in the CONTRACTOR's proposal) or fails to meet acceptable standards of performance, the STATE reserves the right to require the CONTRACTOR to correct this deficiency through such measures, including but not limited to, replacing the individual(s) with a competent individual(s). The STATE Project Manager must approve this replacement. If the CONTRACTOR fails to accomplish project objectives or meet schedule commitments established in meetings with the STATE Project Manager, this contract may be canceled immediately. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR.
25. **TERMINATION.** The occurrence of any of the following constitutes a breach by CONTRACTOR.
- A. CONTRACTOR failure to perform services and/or deliver product on time.
 - B. CONTRACTOR materially misrepresents the progress of the project.
 - C. CONTRACTOR materially misrepresents conformance with the contract.
 - D. Services performed and/or product delivered by CONTRACTOR do not conform to the terms set forth in this Contract.
 - E. CONTRACTOR fails to perform any material provision of this Contract.
 - F. CONTRACTOR assigns this Contract, or any obligation or rights hereunder. (The term "assigns" to include, without limitation, a transfer of majority.)
 - G. CONTRACTOR sells or merges with a third-party (not a parent or subsidiary company) without the prior written consent of STATE.

- H. CONTRACTOR becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of CONTRACTOR's assets.

CONTRACTOR shall cure any of the above breaches and notify STATE of such cure within two (2) weeks from receipt of a notice to cure from STATE. If CONTRACTOR fails to cure, STATE may terminate this Contract by giving CONTRACTOR written notice. STATE shall have no liability to CONTRACTOR thereafter except for payment of any balance due for conforming services performed prior to the date of STATE's notice to cure. STATE may, at its option and without regard to CONTRACTOR's ability to cure, terminate this Contract for cause in the event of any second or subsequent instances of the above breaches by CONTRACTOR.

On termination, the work products produced by the CONTRACTOR in any stage of completion shall be turned over to the STATE immediately. An appraisal of the value of work performed to the date of termination shall be made to establish the amount due to or from the Contractor. Also, all accounts and payments will be processed in accordance with financial arrangements set forth herein for work performed and/or material or services furnished up until the date of termination.

26. **TERMINATION FOR OTHER THAN NON-PERFORMANCE.** If the STATE terminates for reasons other than non-performance, the CONTRACTOR is relieved of any performance responsibilities on the project. The estimated completion of projects may overlap in new fiscal years. (STATE fiscal year is from July 1, to June 30).
27. **CHANGES AND EXTRA WORK:** The CONTRACTOR shall notify the STATE in writing within seven calendar days of alleged changes to the contract due to differing site conditions, extra work, altered work beyond the scope of the contract, or actions taken by the STATE that changed the contract terms and conditions. Work associated with the alleged change shall be suspended immediately and before any expenses are incurred. The written notification to the STATE shall include the following:
- (a) The date of occurrence and the nature and circumstances of the occurrence that constitute a change;
 - (b) Name, title and activity of each STATE representative knowledgeable of the change;
 - (c) Identification of any documents and the substance of any verbal communication involved in the change;
 - (d) Basis for the claim that the work is not required by the contract; and,
 - (e) Detailed estimate of additional time and/or costs that would be incurred due to the change.

Failure of the CONTRACTOR to provide the required notice under this subsection shall constitute a waiver of any and all claims that may arise as a result of the alleged change. Following submission of the notification and in the absence of directions received to the contrary from the STATE, the CONTRACTOR shall continue diligent prosecution of the work under the contract to the maximum extent possible without impacting conditions of the alleged change. Within 14 calendar days after receipt of notice, the STATE shall respond in writing, either confirming or denying that a change has occurred, and advising the CONTRACTOR of the method and manner of further performance. Confirmed changes shall be followed by a negotiated written modification to the contract in accordance with the Contract Modifications clause of this attachment to the contract.

28. **PERSONNEL REQUIREMENTS & KEY PERSONNEL:** All officers, agents, volunteers, or employees of the CONTRACTOR or any of its subcontractors that are assigned to perform work under this contract shall have the proper training, skill, experience and licenses to meet acceptable standards of performance and as required by law. The CONTRACTOR, the CONTRACTORS personnel shall be in compliance with all laws and regulations for Licensing and Certification from all governing agencies. The key personnel identified in the staffing and subcontracting plan shall be in responsible charge of the work during the entire term of this contract. Any change in personnel from that specifically identified in the staffing and subcontracting plan shall be subject to prior written approval by the STATE.

If at any time during the duration of this contract officers, agents, volunteers, or employees of the CONTRACTOR or any of its subcontractors that are performing work under this contract fail to demonstrate the required expertise represented in the staffing and subcontracting plan, fail to perform the work in a professional and skillful manner or fail to retain licenses required by law, then the CONTRACTOR shall remove such person or persons from the work. If, upon the written request of the STATE, the CONTRACTOR or its subcontractors fail to remove such person or persons or fail to furnish skilled and experienced personnel for the proper performance of the work, the STATE may terminate this contract with cause in accordance with the termination provisions of this contract.

29. **ASSIGNMENT AND SUBCONTRACTING:** The CONTRACTOR shall not subcontract any of the work required by this contract, or assign monies to be paid to the CONTRACTOR hereunder, without prior written approval of the STATE.

30**COOPERATION BETWEEN CONTRACTORS:** The STATE reserves the right to contract for and perform other or additional work associated with this contract. In this case each CONTRACTOR involved in shared work areas shall place all work files and elements on designated STATE project network drive, as well as coordinate with development of shared code, data, objects, etc., without interfering with or hindering the progress or completion of the work by the CONTRACTOR, other contractors, or STATE employees.

Where warranted, when separate concurrent contracts are awarded within the same work area, each CONTRACTOR shall submit a current realistic progress schedule that coordinates their work with the work of other contractors. Before the STATE accepts the schedules, each party shall have the opportunity to review all schedules. After review and consultation, the STATE will determine acceptable schedules, which will then be incorporated into the contract for each CONTRACTOR.

Each CONTRACTOR involved accepts all liability, financial or otherwise, in connection with their contract and is responsible for any and all damages or claims that may arise because of interference, hindrance, delay or any other loss caused to other contractors working within the limits of the same work area, or to the STATE.

- 31 **FORUM FOR ENFORCEMENT.** Any controversy or claim arising out of, in connection with, or relating to this Contract or a breach thereof shall be settled by arbitration under the arbitration rules of the American Arbitration Association, Utah Board. The Statutes of the State of Utah shall govern the arbitration proceeding, and the proceeding shall be held in Salt Lake City, Utah. Anything to the contrary contained in the above mentioned rules and statutes notwithstanding, the parties consent that any papers, notices, or process necessary or proper for the institution or continuance of, or relating to any arbitration proceeding, or for the confirmation of an award and entry of judgment on any award made, including appeals in connection with any judgment or

award, may be served on each of the parties by registered mail addressed to the party at the principal office of the party or by personal service on the party in or without the above mentioned state. The parties hereby recognize and consent to the above mentioned arbitration association's jurisdiction over each and every one of them.

32. **DISPUTES.** Any dispute arising under this Contract that is not resolved by the STATE and CONTRACTOR shall be decided by a court of law under the terms of Section **31. Forum for Enforcement.** Pending settlement of the final decision by the court, CONTRACTOR shall proceed diligently with the performance of the Contract in accordance with STATE's direction.